

Department of Social and Health Services

DP Code/Title: M2-6F SCC Legal Fees

Program Level - 030 Mental Health

Budget Period: 2001-03 Version: C3 030 2001-03 2003 Sup Agency Req

Recommendation Summary Text:

The counties incur legal fees during the State Civil Commitment process for the Sexually Violent Predators (SVP). These costs are then billed to the Special Commitment Center (SCC). This request is to cover the shortfall that was estimated in the SCC forecast model for Fiscal Year 2003.

Fiscal Detail:

Operating Expenditures

	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Overall Funding			
001-1 General Fund - Basic Account-State	0	392,000	392,000
Total Cost	0	392,000	392,000

Staffing

Package Description:

This proposal affects payments to Washington State County Prosecuting and Defense Attorneys for Sexually Violent Predators (SVP) cases. Funding is used to reimburse counties for their costs of providing eligible documented attorney services during civil commitment trials, annual evaluations, review process, and release procedures. In the SCC forecast model for the 2001-03 Biennium, the annual cost for county legal fees were underestimated by approximately \$2,336 per SCC resident.

The sexually violent predator civil commitment process is designed to identify persons who meet the criteria of a sexually violent predator as defined in RCW 71.09.020 (1) to ensure public safety and to initiate legal proceedings for total confinement in the SCC Sexually Violent Predator program. SCC provides for the confinement, care and treatment of persons who have been convicted of or charged with a crime of sexual violence and who suffer from a mental abnormality or personality disorder, which makes these persons likely to engage in predatory acts of violence if not confined. The process is initiated by the county with jurisdiction of the persons who may be a SVP. The prosecuting attorney of the county where that person was charged is notified three months prior to:

1. The anticipated release from total confinement of a person who has been convicted of a SVP.
2. The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile.
3. The release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial.
4. The release of a person who has been found not guilty by reason of insanity of a sexual violent offense. In addition, a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act may also be referred to the county prosecuting attorney for this purpose.

During the civil commitment process, the counties incur single assigned Defense Attorney costs. Those persons on trial for a civil commitment finding and placement are afforded the right of legal counsel. A large majority of these persons are indigent and a court-appointed defense attorney is provided for them at a cost to their county of record. In addition, if the court, for good cause, determines that additional counsel is necessary, to include paralegal services, the county of record also incurs those costs. These costs are then billed to SCC, per RCW 71.09 for reimbursement.

A person committed under Chapter RCW 71.09 will have an annual evaluation of his/her mental condition. The annual evaluation will include consideration of whether conditional release to a less restrictive alternative is in the best interest of the

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person and will protect the community. The person retains legal counsel for this annual evaluation and a court-appointed attorney is provided for them at a cost incurred by their county of record.

Reviews are conducted as necessary to determine the treatment progress of the sexual violent predator and whether or not the person is a likely candidate for release to a less restrictive alternative. Reviews are also conducted after violations are committed that could result in penalties assessed against the sexual violent predator, including a return to total confinement. Reviews of any type that affect the legal rights of the sexual violent predator dictate that legal counsel must be retained at a cost incurred by their county of record.

This supplemental request will provide the necessary funding to support the county attorney costs based on the updated SCC forecast model, which is based on the estimated SCC average daily population by resident and on the actual county attorney costs for Fiscal Year 2002.

Narrative Justification and Impact Statement

How contributes to strategic plan:

This decision package addresses the goal to "provide confinement, care and treatment of person detained and civilly committed to the SCC, by ensuring constitutionally adequate treatment meets the security, care and rehabilitative needs of the resident". More specifically, this request ensures access to attorney services that are guaranteed to SVPs as they matriculate through the civil commitment process and in so doing provides a level of protection for the public to limit releasing SVP back in the community before their treatment progresses to the point where they are no longer a perceived threat.

Contributes to strategic plan:

- Provides for the protection and concern for public safety.
- Provides an appropriate level of state facility care and treatment.
- Provides an appropriate level of and access to post-confinement treatment programs.
- Provides access to attorney services for those in need throughout the continuum of the civil commitment process.

Performance Measure Detail

Program: 030

Goal: 10C Provide care, control and treatment of residents at SCC

Incremental Changes

FY 1

FY 2

No measures submitted for package

Reason for change:

The SCC 2001-2003 Biennium Budget Forecast model did not include enough funding to cover the county legal costs based on the SCC average daily population.

Impact on clients and services:

Contracted services for defense and prosecuting counsel will continue to be provided.

Impact on other state programs:

None

Relationship to capital budget:

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Budget Period: 2001-03 Version: C3 030 2001-03 2003 Sup Agency Req

None

Required changes to existing RCW, WAC, contract, or plan:

None

Alternatives explored by agency:

SCC reviewed WAC 275-156-015 and attempted not to pay counties for bills that were in past fiscal years or biennia. Section 275-156-015(5) states "Pay a county's claim for a trial or hearing occurring during each biennium in the order in which the claim is received at the office of accounting services, Special Commitment Center, until the department biennial appropriation is expended". But a judge addressed WAC 388-885-025(4) "A county shall submit a reimbursement claim to the department within 30 days of final costs incurred to assure proper handling of the claim". SCC AG's reviewed above WAC's and mentioned, " that there doesn't appear to be anything prohibiting SCC from reimbursing the counties for legal costs, as long as the request for reimbursement is made within 30 days of the county having paid the attorney for their legal services, WAC 388-885-025. SCC attempted to control costs by the late bills that were received crossing over the fiscal and biennia close, but was unsuccessful.

Budget impacts in future biennia:

The cost can be anticipated to increase and continue into future biennia.

Distinction between one-time and ongoing costs:

These are ongoing costs.

Effects of non-funding:

If this decision package is not funded, based on the need to increase the SCC forecast model, per WAC 275-156-015, and WAC 388-885-025 item (4), SCC will be forced to reduce needed activities in other SCC programs to ensure no over expenditures.

Expenditure Calculations and Assumptions:

See attached - MHD SCC M2-6F SCC Legal Fees.xls

<u>Object Detail</u>	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Overall Funding			
N Grants, Benefits & Client Services	0	392,000	392,000

DSHS Source Code Detail

Overall Funding	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Fund 001-1, General Fund - Basic Account-State			
<u>Sources</u> <u>Title</u>			
0011 General Fund State	0	392,000	392,000
Total for Fund 001-1	0	392,000	392,000
Total Overall Funding	0	392,000	392,000